

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of:

Lucy Road Landfill Consolidated Facility
City of Howell, Livingston County

MDEQ Reference No AOC-ERD-01-006

ADMINISTRATIVE ORDER BY CONSENT
FOR PAYMENT OF PAST COSTS

A. This Administrative Order by Consent ("Order") is entered into voluntarily by and between the Michigan Department of Environmental Quality ("MDEQ") and Jennifer M. Granholm, Attorney General for the State of Michigan ("State"), and the City of Howell, VCF Films, Inc., and Polyone, Inc., pursuant to the authority vested in the Attorney General and the MDEQ by Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, ("NREPA"), 1994 PA 451, as amended, MCL 324.20101 *et seq.* This Order concerns the settlement by the City of Howell, VCF Films, Inc., and M.A. Hanna-Plastic Group, Inc., (alternatively and collectively, hereinafter, the "Reimbursing Parties") of past response activity costs incurred by the State for response activities that addressed hazardous substances that exceeded the Part 201 cleanup criteria of § 20120a(1)(a) or (17) of NREPA and that originated at or emanated from the Lucy Road Consolidated facility, Livingston County, Michigan ("Facility"). Settlement of this claim is in the public interest and will minimize litigation.

B. The execution of this Order by the Reimbursing Parties is neither an admission of liability with respect to any issue dealt with in this Order nor an admission or denial of any findings of fact or legal determinations stated or implied herein.

C. This Order shall apply to and be binding upon the Reimbursing Parties and their successors and assigns. All of the Reimbursing Parties are jointly and severally responsible for carrying out all of the obligations required of them by this Order. No change or changes in the ownership or corporate status of any of the Reimbursing Parties shall in any way alter the Reimbursing Parties' obligations under this Order. The signatories to this Order certify that they are authorized to execute this Order and legally bind the parties they represent.

D. Pursuant to Part 201 of NREPA , the State has incurred costs in responding to the release or threat of a release of hazardous substances at the Facility. State funded response activities have included provision of bottled drinking water, installation of an alternate water supply and investigation of soil and groundwater contamination.

E. The parties to this Order desire to resolve all claims for past response activity costs incurred and paid by the State.

BASED UPON THE FOREGOING FACTS, THE MDEQ, THE ATTORNEY GENERAL AND THE REIMBURSING PARTIES HEREBY AGREE, AND IT IS ORDERED THAT:

1. Within sixty (60) days of the effective date of this Order, the Reimbursing Parties shall pay to the MDEQ the sum of six hundred twenty five thousand dollars (\$625,000) to resolve all claims for past response activity costs incurred by the State at the Facility. For the purposes of this Order, the term "past response activity costs" means costs that the State has incurred for response activities at the Facility and paid prior to the effective date of this Order.

2. Payment is to be made by certified check payable to the "State of Michigan - Environmental Response Fund" and sent to:

Revenue Control Unit
Michigan Department of Environmental Quality
5th Floor, South Tower, Constitution Hall
525 West Allegan Street
Lansing, Michigan 48933

To ensure proper credit, the payments made pursuant to this Order must be made by certified check referencing the Lucy Road Consolidated Facility, the MDEQ Reference No. AOC-ERD-01-006 and the ERD Account Number (ERD2136). A copy of the transmittal letter and the check shall be provided simultaneously to the MDEQ Project Coordinator and the Assistant Attorney General in Charge, Department of Attorney General, Natural Resources and Environmental Quality Division, Suite 315, 300 South Washington Square, Lansing, Michigan 48913. Costs recovered pursuant to this Order shall be deposited in the Environmental Response Fund in accordance with the provisions of § 20108(3) of NREPA, MCL 324.20108(3).

3. In the event that the Reimbursing Parties fail to pay the amount indicated in Paragraph 1 within the time frames set forth in this Order, the Reimbursing Parties shall pay the State

interest on those unreimbursed costs at the rate provided in § 20126a(3) of NREPA, MCL 324.20126a(3). For payments more than 30 days past due, the Reimbursing Parties also shall pay the State stipulated penalties of \$500.00 per day for every day of noncompliance with Paragraph 1. If payment in full, including any interest and penalties due, has not been received by the MDEQ within ninety days after the date the payment is due pursuant to Paragraph 1, and the MDEQ has previously informed the parties of their failure to make payment, the State may make this Order, at its complete and unilateral discretion, null and void. The Order shall become null and void when the State sends the Reimbursing Parties notice that the Order is null and void due to nonpayment of past response activity costs.

4. In the event that the Reimbursing Parties undertake future investigation and/or remediation of hazardous substances at the Facility, the State will waive any future costs which it may incur in performing oversight of the Reimbursing Parties performance of response activities until such time when the State makes a written demand for the performance of response activities; provided, however, that the State shall not seek reimbursement of oversight costs incurred by the State between the effective date of this Order and the date that any such demand is made.

5. In consideration of the payments to be made by the Reimbursing Parties under the terms of this Order, and except as provided in Paragraph 6, the State covenants not to sue or to take further administrative action against the Reimbursing Parties for the past response activity costs addressed in Paragraph 1. With respect to liability for response activity costs, the State's covenant not to sue shall take effect upon receipt by the MDEQ of full payment of the amount

specified in Paragraph 1 and of any associated interest and penalties that may have accrued pursuant to Paragraph 2. This covenant not to sue applies only to past response activity costs and shall not be construed as a covenant not to sue for any other liability that the Reimbursing Parties may have to the State for the Facility. The covenant not to sue shall extend only to the Reimbursing Parties and not to any other person.

6. Nothing in this Order shall be construed as releasing or discharging any liability of any person to the Reimbursing Parties, and the Reimbursing Parties specifically reserve their rights against such persons.

7. Pursuant to § 20129(5) of NREPA, MCL 324.20129(5) and § 113(f)(2) of the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), as amended, 42 USC 9613(f)(2), and to the extent provided in Paragraph 3, the Reimbursing Parties shall not be liable for claims for contribution for the matters addressed in this Order. Entry of this Order does not discharge the liability of any other person that may be liable under § 20126 of NREPA, MCL 324.20126, or §§ 107 and 113 of CERCLA, 42 USC 9607 and 9613, to the extent allowable by law. Pursuant to § 20129(9) of NREPA, MCL 324.20129(9), any action by a Reimbursing Party for contribution from any person not a party to this Order shall be subordinate to the rights of the State if the State files an action pursuant to Part 201 of NREPA or other applicable federal or state law.

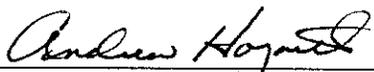
8. The MDEQ and the Attorney General reserve all rights to take enforcement action and to perform response activities pursuant to any state or federal law, including, but not limited to, the right to seek injunctive relief; natural resource damages and costs incurred in the assessment

of natural resource damages; monetary penalties; punitive damages for any violation of law or this Order; liability for criminal acts; and to seek recovery of response activity costs that are not addressed in this Order. The MDEQ and the Attorney General expressly reserve all rights and defenses that they may have to enforce this Order against the Reimbursing Parties.

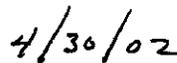
9. All terms used in this Order, which are defined in Part 201 of NREPA and/or the Part 201 Rules, 1990 AACRS R 299.5101 *et seq*, shall have the same meaning in this Order as in Part 201 of NREPA and the Part 201 Rules.

10. This Order shall become effective upon the date that all Reimbursing Parties and the State have signed this Order. All dates for the performance of obligations under this Order shall be calculated from the effective date of this Order. For the purposes of this Order, the term "day" shall mean a calendar day.

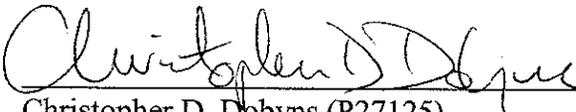
IT IS SO AGREED AND ORDERED BY:



Andrew Hogarth, Chief
Environmental Response Division
Michigan Department of Environmental Quality



Date



Christopher D. Dobyns (P27125)
Assistant Attorney General
Natural Resources and
Environmental Quality Division
Michigan Department of Attorney General



Date

IT IS SO AGREED BY:

The City of Howell
611 E. Grand River
Howell, Michigan 48843

By: Susan Sadler
Susan Sadler (attorney for city of Howell)

Date: 2/22/02

IT IS SO AGREED BY:

VCF Films, Inc.
1100 Sutton
Howell, Michigan 48843

By: Myke Heath
~~Mark R. Miller~~
Myke Heath

Date: 4-1-02

IT IS SO AGREED BY:

M. A. Hanna-Plastic Group, Inc.
33587 Walker Road
Avon Lake, Ohio 44012

By: 
Stephen P. Ormond

Date: March 26, 2002

S: NR/cases/1999050072/Lucy Road/aoc